

## § 291.30

## 36 CFR Ch. II (7–1–16 Edition)

(d) *Determination of scientific and fair market values and cost of response to, and restoration and repair.* Scientific and fair market values and the cost of response to, and restoration and repair are determined as described in §§ 291.37 through 291.39.

### § 291.30 Civil penalty process.

(a) *Notice of violation.* The Authorized Officer shall serve a notice of violation by certified mail (return receipt requested) or other type of verifiable delivery upon any person believed to be subject to a civil penalty. The Authorized Officer shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the section(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The penalty proposed;

(4) Notification of the right to request a hearing in accordance with paragraph (f) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(b) *Response to notice of violation.* The person served with a notice of violation shall have 45 calendar days from the date of mailing in which to respond. During this time the person may:

(1) Accept the proposed penalty, either in writing or by payment. Acceptance of the proposed penalty will be deemed a waiver of the right to request a hearing as described in paragraph (f) in this section.

(2) Seek informal discussions with the Authorized Officer;

(3) File a written response. This written response must be filed with the Authorized Officer within 45 calendar days of the date of mailing of the notice of violation, and must be signed by the person served with the notice of violation. If the person is a corporation, the written response must be signed by an officer authorized to sign such documents. The written response will set forth in full the legal or factual basis for the requested relief.

(4) Request a hearing in accordance with paragraph (f) of this section.

(c) *Assessment of penalty.* (1) The Authorized Officer shall assess a civil pen-

alty upon completion of the 45 calendar day response period, informal discussions, or review of the written response, whichever is later.

(2) The Authorized Officer shall take into consideration all available information, including information provided under paragraph (b) of this section or furnished upon further request by the Authorized Officer.

(3) If the facts warrant a conclusion that no violation has occurred, the Authorized Officer shall notify the person served with the notice of violation that no violation has occurred and no penalty will be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Authorized Officer shall determine a penalty amount in accordance with § 291.29.

(d) *Penalty modification and remittance.* The Authorized Officer may offer to modify or remit the penalty. Modification or remittance may be based upon any or all of the following factors:

(1) Agreement by the person being assessed a civil penalty to return to the Authorized Officer paleontological resources removed from National Forest System lands;

(2) Agreement by the person being assessed a civil penalty to assist the Authorized Officer in activity to preserve, restore, or otherwise contribute to the protection and study of paleontological resources on National Forest System lands;

(3) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(4) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(5) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(e) *Notice of assessment.* The Authorized Officer shall serve a written notice of assessment upon the person served with a notice of violation. The notice of assessment establishes the penalty amount assessed by the Authorized Officer and is served by certified mail (return receipt requested), or other type

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of verifiable delivery. The Authorized Officer shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(f) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (b)(1) of this section, the person served with a notice of assessment may file a written request for a hearing with the hearing office specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request for hearing by certified mail (return receipt requested), as specified in the notice of assessment.

(2) Failure to deliver a written request for a hearing within 45 calendar days of the date of mailing of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with §§ 291.28 through 291.33, and shall not be limited by the amount assessed by the Authorized Officer under § 291.29(a) or any offer of mitigation or remission made by the Authorized Officer.

(g) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (b)(1) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not requested a hearing within 45 calendar days of the date of mailing of the notice of assessment, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely

request for a hearing, the decision resulting from the hearing shall constitute the final administrative decision.

(h) *Payment of penalty.* The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in § 291.32.

(i) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

### § 291.31 Civil penalties hearing procedures.

(a) *Requests for hearings.* Any person wishing to request a hearing on a notice of assessment of civil penalty may file a written dated request for a hearing with the hearing office specified in the notice. The person shall enclose a copy of the notice of violation and the notice of assessment. The request shall state the relief sought, the basis for challenging the facts used for assessing the penalty, and the person's preference as to the place and date for a hearing. A copy of the request shall be served upon the USDA Office of the General Counsel by certified mail, at the addresses specified in the notice of assessment. Hearings shall be conducted in accordance with 5 U.S.C. 554.

(b) *Commencement of hearing procedures.* Upon receipt of a request for a hearing, the hearing office shall assign an administrative law judge to the case. Notice of assignment shall be given promptly to the parties, and thereafter, all pleadings, papers, and other documents in the proceeding shall be filed directly with the administrative law judge, with copies served on the opposing party.

(c) *Appearance and practice.* (1) The respondent may appear in person, by representative, or by counsel, and may participate fully in the proceedings. If respondent fails to appear and the administrative law judge determines such failure is without good cause, the administrative law judge may, in his/her discretion, determine that such failure shall constitute a waiver of the right